

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 10, PROOF OF CLAIM**I. INTRODUCTION**

The principal response of a creditor to the filing of a bankruptcy case is to file a proof of claim (Official Form 10). Specifically, the proof of claim is the creditor's response to the information provided by the debtor in the debtor's schedules. The proof of claim identifies the claimant, states the amount the creditor believes is owed by the debtor, and states the status the creditor believes the claim should have in the case. Documents to support the claim are attached by the creditor to the proof of claim form and filed with it. Such supporting documents provide evidence to substantiate the amount stated in the proof of claim. Creditors may obtain proof of claim forms from the bankruptcy clerk's office.

II. APPLICABLE LAW AND RULES

Section 501 of the Bankruptcy Code authorizes the filing of proofs of claim and proofs of interest. 11 U.S.C. § 501. Rule 5005(a) of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") requires proofs of claim to be filed with the bankruptcy clerk in the district where the bankruptcy case is pending.

A proof of claim is a written statement that sets forth a creditor's claim and must conform substantially to the Official Form. Fed. R. Bankr. P. 3001(a). If a claim is based on a written document, the creditor should include a copy of the document with the proof of claim when filing it with the court. Fed. R. Bankr. P. 3001(c). In addition, if a creditor is claiming a security interest in property of the debtor, the creditor should include evidence of perfection of the security interest with the proof of claim. Fed. R. Bankr. P. 3001(d). Examples of evidence of perfection of a lien include a copy of a deed of trust, mortgage, Uniform Commercial Code financing statement (UCC-1), or court judgment which reflects that the document was filed with the appropriate government agency.

A proof of claim filed in accordance with the Bankruptcy Rules constitutes prima face evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). A proof of claim is deemed "allowed," meaning that it is eligible for payment, unless a party in interest objects. 11 U.S.C. § 502(a). Objections to proofs of claim are governed by Bankruptcy Rule 3007. Moreover, transferors and transferees of claims should refer to and carefully read Bankruptcy Rule 3001(e).

Who May File:

A creditor or an indenture trustee may file a proof of claim. 11 U.S.C. § 501(a), Fed. R. Bankr. P. 3001(b), 3003(c)(1). A creditor is anyone to whom the debtor owes money or property. Most claims are filed by creditors.

An indenture trustee holds a security interest in the debtor's business or property on behalf of others. Indenture trustees may file a claim on behalf of all known or unknown holders of the securities that constitute the trust.

An equity security holder is a holder of an "equitable interest," such as shares in a corporation or the interest of a limited partner in a limited partnership. An equity security holder may only file a proof of interest, not a proof of claim. 11 U.S.C. § 501(a). There is no official form for filing a proof of interest.

If a creditor neglects to file a proof of claim within the time stated in Bankruptcy Rule 3004, the debtor or the trustee may complete and file a proof of claim on behalf of the creditor to ensure that the debtor is discharged of all dischargeable debts and that the trustee pays all creditors to the extent of the available assets. See 11 U.S.C. § 501(c); Fed. R. Bankr. P. 3004. A proof of claim filed by the creditor will supersede a proof of claim filed by the debtor or trustee. Fed. R. Bankr. P. 3004.

If a creditor neglects to file a proof of claim within the time permitted, an entity that is or may be liable with the debtor may file a proof of claim on behalf of the creditor. Fed. R. Bankr. P. 3005(a). A proof of claim filed by the creditor will supersede a proof of claim filed by an entity under Bankruptcy Rule 3005.

In chapter 9 and 11 cases, the schedule of liabilities, required to be filed by the debtor under 11 U.S.C. § 521(1), constitutes prima facie evidence of the validity and amount of the claims of creditors, unless the claims are scheduled as disputed, contingent, or unliquidated. Likewise, the list of equity security holders required to be filed by the debtor under Bankruptcy Rule 1007(a)(3), constitutes prima facie evidence of the validity and amount of the equity security interests. Thus, in such a case, it is not necessary for a creditor or equity security holder to file a proof of claim or interest, as long as the amount of the claim or interest is accurately listed in the debtor's schedules and is not listed as disputed, contingent, or unliquidated. Fed. R. Bankr. P. 3003(b)(1), (b)(2); 11 U.S.C. § 1111(a).

Who Must File:

In a chapter 7, 12, or 13 case, for an unsecured creditor's claim to be "allowed," meaning made eligible for payment, the creditor **must** file a proof of claim. Fed. R. Bankr. P. 3002(a). Some exceptions apply. For example, claims filed in a chapter 11, 12, or 13 case that later converts to a chapter 7 case do not need to be refiled. Fed. R. Bankr. P. 1019(3). Additionally, as stated above, a debtor trustee, guarantor, or codebtor may file on behalf of a creditor. Fed. R. Bankr. P. 3004, 3005.

In a chapter 9 or 11 case, any creditor or equity security holder whose claim or interest is not scheduled, or is scheduled as disputed, contingent, or unliquidated, **must** file a proof of claim or interest in order to be treated as a creditor for purposes of voting on a plan of reorganization and distribution. Fed. R. Bankr. P. 3003(c)(2). Section 1111(a) of the Bankruptcy Code states

that in a chapter 11 case, a proof of claim or interest is deemed filed for any claim that appears in the schedules, unless that claim or interest is scheduled as disputed, contingent, or unliquidated. See also Fed. R. Bankr. P. 3003(b). These three categories are particularly important for the chapter 11 creditor in determining whether to file a proof of claim. 11 U.S.C. § 1111(a). It is the creditor's responsibility to review the schedules and ascertain how the debt is listed. Often a debtor will list a claim for an amount different than the creditor believes is owed. In such a case, the claim should be considered "disputed" and a proof of claim should be filed, even though the debtor may not realize a dispute exists.

Bankruptcy Rule 3003(c)(4) provides, in chapter 9 and 11 cases, that the proof of claim supersedes any scheduling of that claim. Thus, if the amounts or other information stated in the proof of claim conflict with those in the debtor's schedules but are adequately backed up by supporting documents, the information in the proof of claim supersedes the information in the debtor's schedules. In all cases, a proof of claim is deemed "allowed," meaning eligible for payment, unless a party in interest objects. 11 U.S.C. § 502(a). Proofs of claim are subject to objection under Bankruptcy Rule 3007.

Although it is not always necessary to file a proof of claim in a chapter 11 case, many creditors do so to avoid the burden of a possible mistake or misrepresentation in the schedule. Many cases that are filed under chapter 11 later are converted to liquidation proceedings under chapter 7. A creditor who has not filed an actual proof of claim while the case was under chapter 11 **must** file a proof of claim once the conversion has occurred, and must do so within the time prescribed in Bankruptcy Rule 3002(c). Proofs of claim actually filed by creditors during the chapter 11 period of the case will carry over and continue to be valid in the chapter 7 proceeding.

Secured creditors who are fully "collateralized," (the value of their lien on the debtor's property is equal to or greater than the debt), are not required to file a proof of claim. The creditor retains the right to foreclose or repossess the collateral after the bankruptcy. If the creditor does not file a proof of claim and the claim turns out to be only partially collateralized, however, the creditor may lose the opportunity to collect the remaining portion of the debt.

Time To File:

In a chapter 7, 12, or 13 case a proof of claim must be filed within 90 days after the first date set for the meeting of creditors. There are six narrow exceptions to this deadline specified in Bankruptcy Rule 3002.

After the 90 days have expired in a chapter 7 case, further notices in the case usually will be mailed only to creditors whose claims have been filed and those who were awarded extensions. Fed. R. Bankr. P. 2002(h).

In a chapter 7 no-asset case, creditors may receive a notice of no distribution (or no dividend) if there are no assets in the estate from which a dividend can be paid to creditors. Most courts combine this notice with the notice of the meeting of creditors. The notice of no distribution may state that it is unnecessary to file claims and that, if assets become available for paying creditors, another notice will be sent with instructions to file claims. Fed. R. Bankr. P. 2002(e).

In a chapter 9 or 11 case, the court fixes and may extend the time within which proofs of claim may be filed. Fed. R. Bankr. P. 3003(c)(3). However, some courts have local rules fixing the same deadline for proofs of claim in chapter 11 cases as Bankruptcy Rule 3002 establishes for cases under chapters 7, 12, and 13. A creditor should read very carefully the notice announcing the filing of the case and the meeting of creditors, as it also may contain information on filing a proof of claim. If a filing deadline for proofs of claim is not set or "fixed" at the beginning of a case, a creditor should be on the alert for a later notice.

Definitions:

Debtor - The person, corporation, or other entity that has filed a bankruptcy case is called the debtor. See 11 U.S.C. § 101.

Creditor - A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed. See 11 U.S.C. § 101.

Proof of Claim - A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Setoff - A "setoff" is when all or a part of the debt owed by the debtor to the creditor is offset by a mutual debt the creditor owed to the debtor before the bankruptcy case was filed.

Secured Claim - A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property. Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim.

Unsecured Claim - If a claim is not a secured claim, it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim - Certain types of unsecured claims are given priority by the Bankruptcy Code, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the Bankruptcy Code are classified as unsecured nonpriority claims.

Types of Unsecured Priority Claims:

(1) Not listed on this form but first on the priorities list are administrative expenses, fees, and charges incurred by the estate during the bankruptcy case. 11 U.S.C. § 507(a)(1). Those who are entitled to payment under this section are not deemed "creditors" in the bankruptcy. The bulk of administrative expense claims arise after the case is filed. Accordingly, the amounts incurred, and often the identity of many who eventually become claimants, are unknown at the time the schedules are filed. A person or entity having an unpaid claim for an administrative expense should file a request for payment under 11 U.S.C. § 503 rather than filing a proof of claim.

(2) The second priority is afforded to claims under 11 U.S.C. § 507(a)(2) of the Bankruptcy Code to the group frequently known as "involuntary gap" creditors. Involuntary gap creditors are those who hold claims which arise in an involuntary case during the "gap" between the commencement of the case, and the earlier of the appointment of a trustee or the order for relief. These claims are allowable under section 502(f) of the Bankruptcy Code.

(3) Section 507(a)(3) gives third priority to wages, salaries, and commissions, including vacation, sick leave, and severance pay, earned by employees of the debtor within 90 days before the date the petition was filed or the date the debtor ceased doing business, whichever is earlier. The maximum amount that any employee can claim under this priority is \$4,300. The remainder of the claim is a general, unsecured claim.

(4) Under section 507(a)(4) of the Bankruptcy Code, contributions to employee benefit plans have the same monetary restrictions as do wages, salaries, and commissions, limiting the claim to \$4,300 per employee. The contributions are those that were payable for services rendered within 180 days before the filing of the petition or the date the debtor ceased doing business, whichever occurs first.

(5) Section 507(a)(5) of the Bankruptcy Code provides priority for a farmer in the business of raising or producing grain against a debtor who operates grain storage facilities, as well as for a United States fisherman against a debtor who operates a fish storage or processing facility. Both types of claims must arise from the sale, conversion, or consignment of these commodities to the debtor, and the priority does not exceed \$4,300 per farmer or fisherman.

(6) Section 507(a)(6) of the Bankruptcy Code gives priority status to a claim by an individual who made a deposit with the debtor for the purchase of either property or services, and "lost the deposit," never having received the property or services in return for payment. Examples are deposits for furniture that was ordered but never delivered and prepaid "memberships" in gyms or health clubs. The deposit is money owed for goods or services that have not been rendered. The maximum amount entitled to priority for such a claim is \$1,950 per individual.

(7) Section 507(a)(7) of the Bankruptcy Code gives priority status to claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in this section. Some restrictions apply to this priority, and creditors should read section 507(a)(7) carefully.

(8) Sections 507(a)(8) and 507(a)(9) of the Bankruptcy Code give priority status to claims for unpaid taxes and debts owed to federal, state, or local governments, and claims against certain defined debtors for commitments to the federal bank insurance companies, such as the FDIC.

(9) The amounts set out in sections 507(a)(3), 507(a)(4), 507(a)(5), and 507(a)(6) are subject to adjustment on April 1, 2001, and every three years thereafter.

III. DIRECTIONS

Detailed instructions for completing the proof of claim form are printed on the back of the form.

Creditors should read the instructions and complete the form carefully since the information that creditors provide on the form is used for a number of purposes, including the calculation of distributions to creditors. The clerk uses the information to update the creditor's mailing address and fulfill the clerk's noticing duties for transferred claims. The trustee uses the information to identify the creditor, ascertain whether duplicate or conflicting claims exist, and determine whether this claim amends or replaces an earlier filed claim.

The proof of claim form does not include a separate box for general unsecured claims. Creditors should enter the total amount of the claim at the time the bankruptcy case was filed in Box 4, the value of collateral which secures the claim in Box 5, and the unsecured priority portion of the claim in box 6. Definitions for secured claims, priority unsecured claims, and (general) unsecured claims are given on the back of the proof of claim form.

A complete list of unsecured priority claims is found in section 507 of the Bankruptcy Code. In addition, the types of priority claims are discussed earlier in this material on Form 10. Many types of priority claims are limited to certain dollar amounts, and a creditor can only claim priority up to these amounts.

If a claim is an “administrative expense” under section 507(a)(1), payment should not be requested on this form. A separate “Request for Payment of Administrative Expense” and documentation should be submitted pursuant to section 503 of the Bankruptcy Code. There is no national form for a “Request for Payment of Administrative Expense.” Generally, an administrative expense involves either a professional employed to assist the bankruptcy estate or an obligation incurred by a debtor during a chapter 11 reorganization.

Each claim should only include any “arrearage” and other charges that occurred before the petition was filed. An arrearage is the total amount of overdue payments, such as on a mortgage, on which the debtor has defaulted, or “fallen behind.” Even if the debtor subsequently has made payments on the debt, the payments usually will have been applied to the current payment due, leaving earlier installments “in arrears” until made up by additional payments. Often the amounts in arrears also will accrue interest so that the total amount of an arrearage usually will be higher than the total amount of missed payments. A chapter 13 debtor needs to know the amount of any arrearage so that the plan can provide for the debtor to pay the full amount that has accrued.

Creditors must attach to the proof of claim form copies of any documents showing that the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, the creditor must attach an explanation of why they are not available. It is essential that a creditor include all documents relating to the claim, not just those that fit the categories provided in this section of the form. For some claims, a simple statement of account may be enough. Other claims may require extensive documentation. It is in the best interest of the creditor to organize the supporting documents as clearly and simply as possible. Evidence of the perfection of a security interest should also be included, such as a copy of any mortgage, lien, financing statement, or other instrument filed or recorded or a statement of reasons why no action was necessary for perfection. Fed. R. Bankr. P. 3001(d).

At the end of the form, a creditor or other person authorized to file the claim should be sure to include the full printed name and title, if any, of the creditor or authorized person, the creditor's or authorized person's full signature, and the date the form was completed. A power of attorney should be attached, if applicable. By signing the proof of claim, the creditor or other authorized person is stating under oath that in calculating the amount of the claim, the creditor has given the debtor credit for all payments received from the debtor.

Under section 152 of title 18, United States Code, it is a federal crime to file a false or fraudulent claim in a bankruptcy case. Section 152 provides for a fine, for imprisonment of up to five years, or both for a violation. Section 3571 of title 18 provides a maximum fine of \$250,000 for an individual offender and \$500,000 for any “organization” convicted of a violation. Alternatively, section 3571 provides for restitution based on damages caused by the offense, opening the potential for a restitution-based fine even higher than \$500,000.